

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:) **Chapter 11 No. 12-12032**
)
GMAC MORTGAGE, LLC,) **Jointly Administered under No.**
) **12-12020**
Debtor,)
)

NOTICE OF FILING

PLEASE TAKE NOTICE that on October 25, 2013, the undersigned filed **Universal Restoration Services, Inc.'s Objection to Confirmation of the Debtors' Plan of Reorganization** with the Clerk of the United States Bankruptcy Court for the Southern District of New York, a copy of which is attached hereto and hereby served upon you.

Respectfully Submitted,

/s/ Jonathan P. Friedland

Jonathan P. Friedland [IL ARDC # 6257902]
Mitchell Bryan [IL ARDC # 6183011]
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CERTIFICATE OF SERVICE

I, Jonathan P. Friedland, an attorney, hereby state that on October 25, 2013, I caused a true and correct copy of **Universal Restoration Services, Inc.'s Objection to Confirmation of the Debtors' Plan of Reorganization** to be served on the parties listed below in the manner specified.

/s/ Jonathan P. Friedland

Via Electronic Mail:

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Via Courier:

Ally Financial, Inc.
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The Office of the United States Trustee
Southern District of New York
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IN RE:) **Chapter 11 No. 12-12032**
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GMAC MORTGAGE, LLC,) **Jointly Administered under No.**
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**UNIVERSAL RESTORATION SERVICES, INC.'S OBJECTION
TO CONFIRMATION OF THE DEBTORS' PLAN OF REORGANIZATION**

Universal Restoration Services, Inc. objects to the Confirmation of the Plan of Reorganization filed on August 23, 2013 in the above-captioned case (the "Plan"), and in support thereof, Universal states as follows:

1. Universal Restoration Services, Inc. ("Universal"), located at 390 Holbrook Drive, Wheeling, Illinois 60090, objects to the confirmation of the Plan, and the inclusion of Universal as a Class GS-4A GMACM general unsecured creditor for purposes of voting on the Plan.

2. Universal filed an Adversary Complaint against GMAC Mortgage, LLC ("GMAC") on March 1, 2013 (Case Number 13-01278). A true and correct copy of Universal's Adversary Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

3. At the time the Adversary Complaint was filed through the present, Universal has been the plaintiff in a suit presently pending in the Circuit Court of Cook County, Illinois, Law Division (No. 11 L 004635) in which GMAC is a named defendant. The state court complaint against GMAC alleges (i) breach of fiduciary duty; (ii) breach of contract; (iii) fraud; and (iv) constructive trust. The state court action against GMAC was moved to the "bankruptcy stay calendar" pending resolution of Universal's position in GMAC's bankruptcy.

4. Through its adversary proceeding, Universal seeks a determination that monies GMAC holds for Universal in trust or escrow for the benefit of Universal (which is the basis for

the state court complaint) are not “property of the estate” under § 541 of the United States Bankruptcy Code (the “Code”). Universal’s adversary complaint was brought to exclude assets from the reach of other creditors of GMAC which are being held in trust for Universal pursuant to a court order and are not (nor should they be) subordinated to the claims process.

5. The law is well-settled that funds being held in escrow or trust are held for the benefit of another and not property of the escrowee or trustee. See In re Ocana, 151 B.R. 670, 673 (Bankr. S.D.N.Y., February 17, 1993) (“The [property] retained by the Trustee under the terms of the trust for use to compensate its beneficiaries is not the debtor’s property.”); Begier v. I.R.S., 496 U.S. 53, 59, 110 S.Ct. 2258 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not “property of the estate”).

6. Neither GMAC nor its creditors have any economic stake in the funds at issue in Universal’s adversary proceeding, and thus, Universal objects to the inclusion of its claim in the Plan and the confirmation of the Plan as a whole.

Dated: October 25, 2013

LEVENFELD PEARLSTEIN, LLC,

By: /s/ Jonathan P. Friedland

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